IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
FIRST APPEAL NO.2264 OF 2005

Shri Sinappa Yanku Waghmode, .. Appellant
Vs
Priyanka Ananta Karvar and ors. .. Respondents.

Mr M.Deshmukh, for the appellant.
Mr Amit M Shete, for respondent nos 1 to 4.

CORAM : D.B.BHOSALE,J.
DATE : 21.11.2006

PC:

1. Heard the learned counsel for the parties.

2. Admit. Returnable forthwith. Mr Shete, learned counsel, waives service for the respondents. By consent of the learned counsel for the parties, the appeal is heard finally.

3. The learned counsel for the parties have fairly stated that I need not record the detailed reasons for allowing this appeal and they have agreed for the following order.

4. The respondents-plaintiffs have instituted the suit for partition and separate possession as also for perpetual injunction contending that the suit properties are their ancestral and undivided joint family property and each one of them has 1/5th share therein. It appears that after the respondents-plaintiffs led their evidence the appellant-defendant had not cross-examined the witnesses of the plaintiffs. Moreover, for the reasons reflected in the record, the appellant-defendant

could not lead the evidence. In the circumstances, the learned counsel for the appellant has prayed for remand of the matter to enable the appellant-defendant to cross-examine the witnesses examined by the plaintiffs and to lead evidence. Mr. Shete, learned counsel for the respondents, has no objection for allowing the prayer made by the appellant. In the circumstances, I pass the following order.

(a) The judgment and decree dated 17.1.2005 is quashed and set aside. The appellant-defendant shall be allowed to cross-examine the witnesses examined by the plaintiffs. The appellant-defendant is further allowed to examine his witnesses in support of his case, if he so desires. It will be open for the respondents-plaintiffs also to lead further evidence, if they so desire. The trial court shall complete the aforesaid exercise as expeditiously as possible and disposed of the suit within six months from the date of receipt of this order.

(b) The appellant is directed to produce a copy of this order before the trial Court within four weeks from today.

(c) The appeal accordingly stands allowed. No order

as to costs.

(D.B.BHOSALE,J.)